



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

KIPTOPEKE VILLAS, LLC

FOR

3540 KIPTOPEKE DRIVE

Virginia Pollutant Discharge Elimination System Permit No. VAR10

Registration No. VAR10I113

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and Kiptopeke Villas, LLC regarding 3540 Kiptopeke Drive, Northampton County, VA, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "2014 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2014 and which expires on June 30, 2019.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. "Construction activity" means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "General Permit Regulation" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.
7. "Kiptopeke" means Kiptopeke Villas, LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Kiptopeke is a "person" within the meaning of Va. Code § 62.1-44.3.
8. "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
9. "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Site" means 3540 Kiptopeke Drive in Northampton, Virginia, from which discharges of stormwater associated with construction activity occur.
12. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
13. "State Waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
14. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
15. "Stormwater management plan" means a document or series of documents containing material describing methods for complying with the requirements of a VSMP or the VSMP Regulations. 9 VAC 25-870-10.

16. "SWPPP" means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.
17. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
18. "Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Va. Code.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "VPDES" means Virginia Pollutant Discharge Elimination System.
22. "VSMP" means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.
23. "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.
24. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.
25. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Kiptopeke owns the Site located in Northampton, Virginia, which discharges stormwater associated with construction activity.
2. DEQ is the VSMP authority for Northampton County, Virginia.
3. On May 5, 2017, DEQ granted coverage to Kiptopeke under the 2014 Permit. DEQ assigned Kiptopeke registration number VAR101511.
4. The 2014 Permit allows Kiptopeke to discharge stormwater associated with construction activities from the Site to Tommys ditch, in strict compliance with the terms and conditions of the 2014 Permit.
5. Tommys ditch is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law.
6. During DEQ inspections on May 16, 2017 and June 20, 2017, DEQ staff observed that SWPPP inspections were not being conducted at the required frequency and when they were conducted, the reports did not include all of the requirements listed in the Permit.

2014 Permit Part II (F)(2) states, "a. Inspections shall be conducted at a frequency of: (1) At least once every five business days; or (2) At least once every 10 business days and no later than 48 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between business days, the inspection shall be conducted no later than the next business day; b. Where areas have been temporarily stabilized or land-disturbing activities will be suspended due to continuous frozen ground conditions and stormwater discharges are unlikely, the inspection frequency may be reduced to once per month. If weather conditions (such as above freezing temperatures or rain or snow events) make discharges likely, the operator shall immediately resume the regular inspection frequency."

2014 Permit Part II (F)(4) states in part, "Each inspection report shall include the following items: a. The date and time of the inspection and when applicable, the date and rainfall amount of the last measurable storm event; b. Summarized findings of the inspection; c. The location(s) of prohibited discharges; d. The location(s) of control measures that require maintenance; e. The location(s) of control measures that failed to operate as designed or proved inadequate or inappropriate for a particular location; f. The location(s) where any evidence identified under Part II F 3 a (7) exists; g. The location(s) where any additional control measure is needed that did not exist at the time of inspection; h. A list of corrective actions required (including any changes to the SWPPP that are necessary) as a result of the inspection or to maintain permit compliance; i. Documentation of any corrective actions required from a previous inspection that have not been implemented; and j. The date and signature of the qualified personnel and the operator or its duly authorized representative."

7. During DEQ inspections on May 16, 2017 and June 20, 2017, DEQ staff observed that the installation of bioretention basin #1 did not follow the sequence of construction in the approved stormwater management plan and the basin's slopes were not installed in accordance with the approved stormwater management plan. In addition, the emergency spillway was not installed in accordance with the approved stormwater management plan and there was a small area of rock installed that does not match the dimensions provided in the plan.

9 VAC 25-870-54(C) states: "A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VSMP authority."

8. During DEQ inspections on May 16, 2017 and June 20, 2017, DEQ staff observed that the inlet protection was not properly maintained in effective operating condition.

9 VAC 25-840-40(10) states: "All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment."

9 VAC 25-840-60(A) states in part: "All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function."

9 VAC 25-870-54(B) states: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations."

2014 Permit Part II (E)(1) states: "All control measures must be maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications..."

9. During DEQ inspections on May 16, 2017 and June 20, 2017, DEQ staff observed that the SWPPP was missing the following items:
 - a. A copy of the notice of coverage letter
 - b. A list of amendments/modifications to the SWPPP
 - c. Documentation containing qualifying information about the site's qualified personnel
 - d. Documentation identifying the contractors who are implementing and maintaining control measures on-site
 - e. A record of major events occurring on-site
 - f. A record of dates when modifications to controls are made on-site

2014 Permit Part II (A)(1)(b) states: "The SWPPP shall include...upon receipt, a copy of the notice of coverage under the general VPDES permit for discharges of stormwater from construction activities (i.e., notice of coverage letter)."

2014 Permit Part II (A)(6) states: "the SWPPP shall contain "the name, phone number, and qualifications of the qualified personnel conducting inspections required by this general permit."

2014 Permit Part II (B)(1) states: "The operator shall amend the SWPPP whenever there is a change in the design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that has not been previously addressed in the SWPPP."

2014 Permit Part II (B)(2) states: "The SWPPP must be amended if, during inspections or investigations by the operator's qualified personnel, or by local, state, or federal officials, it is determined that the existing control measures are ineffective in minimizing pollutants in discharges from the construction activity. Revisions to the SWPPP shall include additional or modified control measures designed and implemented to correct problems identified. If approval by the VESCP authority, VSMP authority, or department is necessary for the control measure, revisions to the SWPPP shall be completed no later than seven calendar days following approval. Implementation of these additional or modified control measures must be accomplished as described in Part II G."

2014 Permit Part II (B)(3) states: "The SWPPP must clearly identify the contractor(s) that will implement and maintain each control measure identified in the SWPPP. The SWPPP shall be amended to identify any new contractor that will implement and maintain a control measure."

2014 Permit Part II (B)(4)(a) states: "The operator shall update the SWPPP no later than seven days following any modification to its implementation. All modifications or updates to the SWPPP shall be noted and shall include the following items: a. A record of dates when: (1) Major grading activities occur; (2) Construction activities temporarily or permanently cease on a portion of the site; and (3) Stabilization measures are initiated."

2014 Permit Part II (B)(4)(b) states: "The operator shall update the SWPPP no later than seven days following any modification to its implementation. All modifications or updates to the SWPPP shall be noted and shall include the following items: b. Documentation of replaced or modified controls where periodic inspections or other information have indicated that the controls have been used inappropriately or incorrectly and where modified as soon as possible."

10. Based on the results of the May 16, 2017 and June 20, 2017 inspections, the Board concludes that Kiptopeke violated 9 VAC 25-840-60, 9 VAC 25-870-54(B) and (C), and the conditions of Parts IIA(1)(b), IIA(6), IIB(1) and (2), IIB(3), IIB(4)(a)and(b), IIE(1), and IIF(2) and (4), of the 2014 Permit, by discharging stormwater from a construction

activity while concurrently failing to comply with the conditions of the 2014 Permit, as described in paragraphs C(6) through (9) of this Order.

11. On August 25, 2017, DEQ issued NOV No. TRO-17-001 to Kiptopeke, which included the violations described in C(6) through (9) above.
12. On September 25, 2017, Department staff met with a representative of Kiptopeke to discuss the violations.
13. On September 25, 2017, Department staff informed Kiptopeke that the inlet protection at the Site can be removed, negating the need to correct the violation described in paragraph C(8), above.
14. Kiptopeke has submitted documentation that verifies that the violation as described in paragraph C(6), above, has been corrected.
15. In order for Kiptopeke to complete its return to compliance, DEQ staff and Kiptopeke have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, the Board orders Kiptopeke, and Kiptopeke agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$4,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Kiptopeke shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, Kiptopeke shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Kiptopeke for good cause shown by Kiptopeke, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 et seq., after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. TRO-17-001 dated August 25, 2017. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Kiptopeke admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Kiptopeke consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Kiptopeke declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Kiptopeke to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Kiptopeke shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Kiptopeke shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Kiptopeke shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance;
and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Kiptopeke. Nevertheless, Kiptopeke agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Kiptopeke has completed all of the requirements of the Order;
 - b. Kiptopeke petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Kiptopeke.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Kiptopeke from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

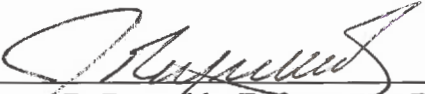
12. Any plans, reports, schedules or specifications attached hereto or submitted by Kiptopeke and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Kiptopeke certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind

Kiptopeke to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Kiptopeke.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Kiptopeke voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 18th day of January, 2018.



Jefferson D. Reynolds, Enforcement Director
Department of Environmental Quality

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Kiptopeke Villas, LLC voluntarily agrees to the issuance of this Order.

Date: 11-7-17 By: [Signature] member
(Person) (Title)
Kiptopeke Villas, LLC

Commonwealth of Virginia
City/County of Norfolk

The foregoing document was signed and acknowledged before me this 7 day of
November, 2017, by Angelo S. Manue who is
Member of Kiptopeke Villas, LLC, on behalf of the company.

[Signature]
Notary Public
7672254
Registration No.

My commission expires: 5/31/20

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. SWPPP

- a. By November 15, 2017, Kiptopeke shall include its notice of coverage letter in its SWPPP and post a copy on the front door.
- b. By November 15, 2017, Kiptopeke shall include a list of plan modifications in its SWPPP, including red-lined plans indicating changes made on-site.

2. Bioretention Basin #1

- a. By June 1, 2018, Kiptopeke shall install bioretention basin #1 in accordance with the approved stormwater management plan.

3. DEQ Contact

Unless otherwise specified in this Order, Kiptopeke shall submit all requirements of Appendix A of this Order to:

**Kristen Sadtler
Stormwater Enforcement Manager
VA DEQ – Central Office
P.O. Box 1105
Richmond VA 23218
804-698-4149
Kristen.sadtler@deq.virginia.gov**